

2013 DRAFTING REQUEST

Bill

Received: **10/9/2012** Received By: **jkreye**
Wanted: **As time permits** Same as LRB:
For: **Administration-Budget** By/Representing: **Ley**
May Contact: Drafter: **jkreye**
Subject: **Tax, Other - sales** Addl. Drafters:
Extra Copies:

Submit via email: **YES**
Requester's email:
Carbon copy (CC) to: **joseph.kreye@legis.wisconsin.gov**

Pre Topic:

DOA:.....Ley, BB0068 -

Topic:

Changes to sales tax definitions

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkreye 10/17/2012			_____			
/P1	jkreye 1/16/2013	kfollett 10/19/2012	jmurphy 10/22/2012	_____	srose 10/22/2012		
/P2		kfollett 1/16/2013	jmurphy 1/16/2013	_____	sbasford 1/16/2013		

FE Sent For:

<END>

2013 DRAFTING REQUEST

Bill

Received: 10/9/2012 Received By: jkreye
Wanted: As time permits Companion to LRB:
For: Administration-Budget By/Representing: Ley
May Contact: Drafter: jkreye
Subject: Tax, Other - sales Addl. Drafters:
Extra Copies:

Submit via email: YES
Requester's email:
Carbon copy (CC) to: joseph.kreye@legis.wisconsin.gov

Pre Topic:

DOA:.....Ley, BB0068 -


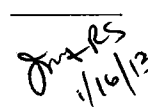
Topic:

Changes to sales tax definitions

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkreye 10/17/2012						
/P1		kfollett 10/19/2012	10/22/2012		srose 10/22/2012		
FE Sent For:		1 P2 / 6 f 1/16	 1/16/13	 1/16/13			

<END>

2013 DRAFTING REQUEST

Bill

Received: **10/9/2012** Received By: **jkreye**
Wanted: **As time permits** Companion to LRB:
For: **Administration-Budget** By/Representing: **Ley**
May Contact: Drafter: **jkreye**
Subject: **Tax, Other - sales** Addl. Drafters:
Extra Copies:

Submit via email: **YES**
Requester's email:
Carbon copy (CC) to: **joseph.kreye@legis.wisconsin.gov**

Pre Topic:

DOA:.....Ley, BB0068 -

Topic:

Changes to sales tax definitions

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkreye	1/PIEF 10/19	jm	10/22 jm			

FE Sent For:

<END>

Kreye, Joseph

0268

From: Hanaman, Cathlene
Sent: Monday, October 08, 2012 8:38 AM
To: Shovers, Marc; Kreye, Joseph
Subject: FW: Statutory Language Drafting Request
Attachments: 7009 Clarify Definitions of Sales Tax Items.docx

From: Emily.Ley@wisconsin.gov [<mailto:Emily.Ley@wisconsin.gov>]
Sent: Monday, October 01, 2012 5:16 PM
To: Hanaman, Cathlene
Cc: Thornton, Scott - DOA; Frederick, Caitlin - DOA; Ley, Emily A - DOA
Subject: Statutory Language Drafting Request

Biennial Budget: 2013-15

Topic: Clarify various sales tax definitions

Tracking Code: BB0068

SBO Team: TLGED

SBO Analyst: Ley, Emily - DOA
Phone: 608-266-7597
E-mail: Emily.Ley@wisconsin.gov

Agency Acronym: DOR

Agency Number: 566

Priority: Medium

Intent:

- 1) Modify the Wisconsin statutory definition of "prosthetic device" to include the words "replacement, corrective, or supportive" to mirror the SSUTA definition of prosthetic device and clarify that such items as football helmets, mouth guards, steel toe boots, welding gloves, hard hats, etc., are not prosthetic devices and thus ineligible for the sales and use tax exemption for prosthetic devices.
- 2) Clarify the definition of "prepared food" to include the word "bowls" in sec. 77.51(10m)(a), Wis. Stats., for consistency purposes.
- 3) Change "Medicines" to "Drugs" in sec. 77.54(57) to describe what qualifies for exemption from Wisconsin sales and use tax. The term "medicine" is not defined in the Wisconsin Statutes. The word "medicine" was changed to "drug" when Wisconsin conformed its laws to the requirements of the Streamlined Sales and Use Tax Agreement and the definition of "drug" was also added.
- 4) Insert the words "advertising and promotional" before the phrase "direct mail" in sec. 77.53(16), Wis. Stats., in to clarify that "direct mail" was split into two categories (a) "advertising and promotional direct

mail" and (b) "other direct mail." Credit for taxes paid to other state may only be disallowed for "advertising and promotional direct mail" in the situation covered by the statute.

5) Insert the specific definition of "place of primary use" contained in the Streamlined Sales and Use Tax Agreement in s. 77.522(4)(a)9., Wis. Stats. Rather than just providing references to various public laws and amendments to those laws and to be consistent with the definition contained in the Streamlined Sales and Use Tax Agreement, the specific definition language needs to be included in the statute.

Attachments: True

Please send completed drafts to statlanguage@wisapps.wi.gov

TITLE: CLARIFY DEFINITIONS OF (1) "PROSTHETIC DEVICE" AND (2) "PREPARED FOOD;" (3) CHANGE "MEDICINES" TO "DRUGS" IN SEC. 77.54(57) FOR CONSISTENCY PURPOSES; (4) CHANGE "DIRECT MAIL" TO "ADVERTISING AND PROMOTIONAL DIRECT MAIL" IN SEC. 77.53(16); AND (5) ADD SPECIFIC LANGUAGE FOR DEFINITION OF "PLACE OF PRIMARY USE"

DESCRIPTION OF CURRENT LAW AND PROBLEM

(1) Prosthetic Device Definition

Current Law:

Section 77.51(11m), Wis. Stats. (2009-10), provides the definition of "prosthetic device"

The Streamlined Sales and Use Tax Agreement (SSUTA) also requires that a "prosthetic device" be a "replacement, corrective, or supportive device." (Note: The difference between the definition contained in the Wisconsin Statutes and the definition contained in the SSUTA is that the modifiers "replacement, corrective, or supportive" before the word "device" are not included in the definition contained in the Wisconsin Statutes.)

Problem:

As currently drafted, a person may come to the conclusion that items such as football helmets, mouth guards, steel toe boots, welding gloves, hard hats, safety glasses, etc., fall within the definition of "prosthetic device" and qualify for the exemption from Wisconsin sales and use tax for prosthetic devices used for a human being since they prevent a physical deformity or malfunction (i.e., injury). Other normal wearing apparel type items may also be considered to fall within the definition of "prosthetic device" if the recommendation for action indicated below is not enacted.

(2) Prepared Food Definition

Current Law:

Section 77.51(10m), Wis. Stats. (2009-10), provides the definition of "prepared food."

Problem:

As currently drafted, the word "bowls" was not included in two different places in sec. 77.51(10m)(a), Wis. Stats. (2009-10), and should be added for consistency purposes.

(3) Change "Medicines" to "Drugs" in sec. 77.54(57)

Current Law:

Section 77.54(57)(b)4., Wis. Stats. (2009-10), uses the term "medicine" in describing what qualifies for exemption from Wisconsin sales and use tax.

Problem:

The term "medicine" is not defined in the Wisconsin Statutes. The word "medicine" was changed to "drug" when Wisconsin conformed its laws to the requirements of the Streamlined Sales and Use Tax Agreement and the definition of "drug" was also added.

(4) Change "Direct Mail" to "Advertising and Promotional Direct Mail" in sec. 77.53(16)

Current Law:

Section 77.53(16), Wis. Stats. (2009-10), uses the term "direct mail" in explaining a situation in which credit for taxes paid to other states may be disallowed.

Problem:

The phrase "direct mail" was split into two categories (a) "advertising and promotional direct mail" and (b) "other direct mail." Credit for taxes paid to other state may only be disallowed for "advertising and promotional direct mail" in the situation covered by the statute.

(5) Add Specific Language for Definition of "Place of Primary Use"

Current Law:

Section 77.522(4)(a)9., Wis. Stats. (2009-10), defines the term "place of primary use" by referring to specific public laws and amendments to those laws.

Problem:

Rather than just providing references to various public laws and amendments to those laws and to be consistent with the definition contained in the Streamlined Sales and Use Tax Agreement, the specific definition language needs to be included in the statute.

RECOMMENDATION FOR ACTION

(1) The words "replacement, corrective, or supportive" need to be inserted in the Wisconsin statutory definition of prosthetic device between the words "a" and "device" at the beginning of the definition.

(2) Insert the word "bowls" in two different places within the definition of "prepared food" as indicated in the drafting instructions below.

(3) To be consistent throughout ch. 77, Wis. Stats., the word "medicine" should be changed to "drug" in sec. 77.54(57)(b)4., Wis. Stats. (2009-10).

(4) Insert the words "advertising and promotional" before the phrase "direct mail" in all 4 places in sec. 77.53(16), Wis. Stats. (2009-10).

(5) Insert the specific definition of "place of primary use" contained in the Streamlined Sales and Use Tax Agreement.

IMPACT ON JOB CREATION

No impact on job creation.

FISCAL EFFECT

None.

DRAFTING INSTRUCTIONS

See Attachment 1.

EFFECTIVE DATE

Day after publication.

INTERESTED/AFFECTED PARTIES

Any persons selling prosthetic devices, prepared foods, raising animals that are sold primarily to a biotechnology business, a public or private institution of higher education, or a governmental unit for exclusive and direct use by any such entity in qualified research or manufacturing, selling advertising and promotional direct mail, and services sourced based on the place of primary use.

(1) Prosthetic Device Definition

Amend section 77.51(11m), Stats., so that it reads as follows:

"Prosthetic device' means a replacement, corrective, or supportive device, including the repair parts and replacement parts for the device, that is placed in or worn on the body to artificially replace a missing portion of the body; to prevent or correct a physical deformity or malfunction; or to support a weak or deformed portion of the body."

(2) Prepared Food Definition

Amend section 77.51(10m), Stats., to insert the word "bowls" between "plates" and "knives" in sec. 77.51(10m)(a)3., Wis. Stats., and between "plates" and "glasses" in sec. 77.51(10m)(a)3.b., Wis. Stats.

(3) Change "Medicines" to "Drugs" in sec. 77.54(57), Wis. Stats. (2009-10)

Amend sec. 77.54(57)(b)4., Wis. Stats. (2009-10), to strike the word "medicines" and replace it with the word "drugs."

(4) Change "Direct Mail" to "Advertising and Promotional Direct Mail" in sec. 77.53(16)

Amend sec. 77.53(16), Wis. Stats. (2009-10), so that it reads as follows:

"If the purchase, rental or lease of tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or service subject to the tax imposed by this section was subject to a sales tax by another state in which the purchase was made, the amount of sales tax paid the other state shall be applied as a credit against and deducted from the tax, to the extent thereof, imposed by this section, except no credit may be applied against and deducted from a sales tax paid on the purchase of advertising and promotional direct mail, if the advertising and promotional direct mail purchaser did not provide to the seller a direct pay permit, an exemption certificate claiming advertising and promotional direct mail, or other information that indicates the appropriate taxing jurisdiction to which the advertising and promotional direct mail is delivered to the ultimate recipients. In this subsection "sales tax" includes a use or excise tax imposed on the use of tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or taxable service by the state to which the sale was sourced and "state" includes the District of Columbia and the commonwealth of Puerto Rico but does not include the several territories organized by congress."

(5) Add Specific Language for Definition of "Place of Primary Use"

Amend sec. 77.522(4)(a)9., Wis. Stats. (2009-10), so that it reads as follows:

"Place of primary use' means place of primary use, as determined under 4 USC 116 to 126, as amended by P.L. 106-252 the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, 'place of primary use' must be within the licensed service area of the home service provider."



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0268/P1

JK...

6f

DOA:.....Ley, BB0068 - Changes to sales tax definitions

FOR 2013-2015 BUDGET — NOT READY FOR INTRODUCTION

in 10-17-12

DN

Don't Gen

1 **AN ACT ...; relating to: the budget.**

Analysis by the Legislative Reference Bureau

TAXATION

OTHER TAXATION

This bill makes technical corrections to state sales and use tax provisions.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

✓

2 **SECTION 1.** 77.51 (10m) (a) 3. (intro.) of the statutes is amended to read:

3 77.51 (10m) (a) 3. (intro.) Food and food ingredients sold with eating utensils
4 that are provided by the retailer of the food and food ingredients, including plates,
5 bowls, knives, forks, spoons, glasses, cups, napkins, or straws. In this subdivision,
6 "plate" does not include a container or packaging used to transport food and food
7 ingredients. For purposes of this subdivision, a retailer provides utensils if any of
8 the following applies:

History: 1973 c. 333; 1975 c. 39, 41, 99, 224; 1975 c. 413 s. 18; 1977 c. 29, 418; 1979 c. 1 ss. 57 to 59, 61, 62; 1979 c. 174; 1981 c. 20; 1981 c. 79 s. 17; 1983 a. 23, 27; 1983 a. 189 ss. 92 to 108, 329 (12); 1983 a. 510, 538; 1983 a. 544 ss. 13 to 46, 47 (1) (b); 1985 a. 29, 332; 1987 a. 27, 399; 1989 a. 31, 335, 336; 1991 a. 39, 269, 316; 1993 a.

16, 112, 184; 1997 a. 27, 237; 1999 a. 9, 83; 2001 a. 45, 102; 2003 a. 48; 2005 a. 25, 327, 441, 479; 2007 a. 11, 20, 130; 2009 a. 2 ss. 225 to 345, 389; 2009 a. 12 s. 18; 2009 a. 28 ss. 1830b to 1836h, 1844 to 1846; 2009 a. 276, 330; 2011 a. 208.

1 **SECTION 2. 77.51 (10m) (a) 3. b. of the statutes is amended to read:**

2 **77.51 (10m) (a) 3. b.** For retailers not described under subd. 3. a., the retailer's
3 customary practice is to physically give or hand the utensils to the purchaser, except
4 that plates, bowls, glasses, or cups that are necessary for the purchaser to receive the
5 food and food ingredients need only be made available to the purchaser.

History: 1973 c. 333; 1975 c. 39, 41, 99, 224; 1975 c. 413 s. 18; 1977 c. 29, 418; 1979 c. 1 ss. 57 to 59, 61, 62; 1979 c. 174; 1981 c. 20; 1981 c. 79 s. 17; 1983 a. 23, 27; 1983 a. 189 ss. 92 to 108, 329 (12); 1983 a. 510, 538; 1983 a. 544 ss. 13 to 46, 47 (1) (b); 1985 a. 29, 332; 1987 a. 27, 399; 1989 a. 31, 335, 336; 1991 a. 39, 269, 316; 1993 a. 16, 112, 184; 1997 a. 27, 237; 1999 a. 9, 83; 2001 a. 45, 102; 2003 a. 48; 2005 a. 25, 327, 441, 479; 2007 a. 11, 20, 130; 2009 a. 2 ss. 225 to 345, 389; 2009 a. 12 s. 18; 2009 a. 28 ss. 1830b to 1836h, 1844 to 1846; 2009 a. 276, 330; 2011 a. 208.

6 **SECTION 3. 77.51 (11m) of the statutes is amended to read:**

7 **77.51 (11m) "Prosthetic device"** means a replacement, corrective, or supportive
8 device, including the repair parts and replacement parts for the device, that is placed
9 in or worn on the body to artificially replace a missing portion of the body; to prevent
10 or correct a physical deformity or malfunction; or to support a weak or deformed
11 portion of the body.

History: 1973 c. 333; 1975 c. 39, 41, 99, 224; 1975 c. 413 s. 18; 1977 c. 29, 418; 1979 c. 1 ss. 57 to 59, 61, 62; 1979 c. 174; 1981 c. 20; 1981 c. 79 s. 17; 1983 a. 23, 27; 1983 a. 189 ss. 92 to 108, 329 (12); 1983 a. 510, 538; 1983 a. 544 ss. 13 to 46, 47 (1) (b); 1985 a. 29, 332; 1987 a. 27, 399; 1989 a. 31, 335, 336; 1991 a. 39, 269, 316; 1993 a. 16, 112, 184; 1997 a. 27, 237; 1999 a. 9, 83; 2001 a. 45, 102; 2003 a. 48; 2005 a. 25, 327, 441, 479; 2007 a. 11, 20, 130; 2009 a. 2 ss. 225 to 345, 389; 2009 a. 12 s. 18; 2009 a. 28 ss. 1830b to 1836h, 1844 to 1846; 2009 a. 276, 330; 2011 a. 208.

12 **SECTION 4. 77.522 (4) (a) 9. of the statutes is amended to read:**

13 **77.522 (4) (a) 9. "Place of primary use"** ^{plain} means ~~place of primary use~~, as
14 ~~determined under 4 USC 116 to 126, as amended by P.L. 106-252~~ the residential or
15 primary business street address that represents where the customer's use of a
16 telecommunications service primarily occurs. With regard to a mobile
17 telecommunications service, "place of primary use" means a street address within
18 the licensed service area of the home service provider.

History: 2009 a. 2, 28, 276, 330.

19 **SECTION 5. 77.53 (16) of the statutes is amended to read:**

20 **77.53 (16)** If the purchase, rental or lease of tangible personal property, or
21 items, property, or goods under s. 77.52 (1) (b), (c), or (d), or service subject to the tax
22 imposed by this section was subject to a sales tax by another state in which the

1 purchase was made, the amount of sales tax paid the other state shall be applied as
2 a credit against and deducted from the tax, to the extent thereof, imposed by this
3 section, except no credit may be applied against and deducted from a sales tax paid
4 on the purchase of advertising and promotional direct mail, if the advertising and
5 promotional direct mail purchaser did not provide to the seller a direct pay permit,
6 an exemption certificate claiming advertising and promotional direct mail, or other
7 information that indicates the appropriate taxing jurisdiction to which the
8 advertising and promotional direct mail is delivered to the ultimate recipients. In
9 this subsection "sales tax" includes a use or excise tax imposed on the use of tangible
10 personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or
11 taxable service by the state to which the sale was sourced and "state" includes the
12 District of Columbia and the commonwealth of Puerto Rico but does not include the
13 several territories organized by congress.

History: 1971 c. 125, 211; 1977 c. 29, 418; 1979 c. 1, 174; 1981 c. 317; 1983 a. 2; 1985 a. 29; 1987 a. 27, 268, 399; 1991 a. 39, 316; 1993 a. 16, 112; 1995 a. 27, 209; 1997 a. 27, 41, 237; 1999 a. 31; 2001 a. 109; 2003 a. 321; 2005 a. 441; 2007 a. 11, 20; 2009 a. 2, 28, 276, 330; 2011 a. 208.

14 **SECTION 6.** 77.54 (57) (b) 4. of the statutes is amended to read:

15 77.54 (57) (b) 4. The items listed in sub. (3m) (a) to (m), ~~medicines~~ drugs, semen
16 for artificial insemination, fuel, and electricity that are used exclusively and directly
17 in raising animals that are sold primarily to a biotechnology business, a public or
18 private institution of higher education, or a governmental unit for exclusive and
19 direct use by any such entity in qualified research or manufacturing.

History: 1971 c. 64, 154, 215, 311; 1973 c. 90, 156, 240; 1975 c. 39, 96, 102, 146, 200; 1977 c. 29; 1977 c. 83 ss. 13, 26; 1977 c. 250, 368, 418; 1979 c. 1, 34, 87, 174; 1981 c. 20; 1981 c. 79 s. 18; 1981 c. 96 s. 67; 1981 c. 264; 1981 c. 282 s. 47; 1981 c. 317; 1983 a. 27 ss. 1284d to 1284up, 2202 (38); 1983 a. 189 ss. 101, 106, 329 (5), (12), (13); 1983 a. 192, 287, 405, 426, 498, 510, 538, 544; 1985 a. 29, 149, 332; 1987 a. 27; 1987 a. 312 s. 17; 1987 a. 399; 1989 a. 31, 238, 270, 335, 359; 1991 a. 37, 39, 269, 316; 1993 a. 16, 263, 332; 1995 a. 27, 125, 225, 227; 1997 a. 27, 35, 41, 184, 237, 291; 1999 a. 9, 65, 83; 1999 a. 150 s. 672; 1999 a. 167; 2001 a. 16, 103, 109; 2003 a. 99, 128; 2005 a. 25, 74, 141, 149, 335, 366, 479; 2007 a. 11, 19, 20, 97, 130; 2009 a. 2, 28, 185, 204, 330; 2011 a. 7, 10, 32, 208, 260.

20 (END)

D-Note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0268/P1dn

JK:...

Date

X
Emily:

X
With regard to changing the definition of "place of primary use", it was not clear from the instructions if, in the case of a mobile telecommunications service, *is* the place of primary use is a street address within the service area or the service area itself. DOR may want to rework the language to make this clear.

Joseph T. Kreye
Senior Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0268/P1dn
JK:kjf:jm

October 22, 2012

Emily:

With regard to changing the definition of "place of primary use," it was not clear from the instructions if, in the case of a mobile telecommunications service, the place of primary use is a street address within the service area or the service area itself. DOR may want to rework the language to make this clear.

Joseph T. Kreye
Senior Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.wisconsin.gov

Kreye, Joseph

From: Ley, Emily A - DOA <Emily.Ley@wisconsin.gov>
Sent: Wednesday, January 16, 2013 11:30 AM
To: Kreye, Joseph
Subject: BB0068 SSUTA definitions

Hi Joe,

I asked DOR to take a look at BB0068, Sales tax definitions, and review the definition of "place of primary use." They have suggested a definition in blue below. What do you think?

Emily

From: Wagner, Michael W - DOR
Sent: Wednesday, January 16, 2013 11:23 AM
To: Ley, Emily A - DOA
Subject: RE: DIN 7009 SSUTA definitions

Emily,

The SSUTA has the following definition:

"'Place of primary use' means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, 'place of primary use' must be within the licensed service area of the home service provider."

In Section 4 of the draft (page 2, lines 12-18), Joe drafted the following:

77.522 (4) (a) 9. "Place of primary use" means the residential or primary business street address that represents where the customer's use of a telecommunications service primarily occurs. With regard to a mobile telecommunications service, "place of primary use" means a street address within the licensed service area of the home service provider.

In light of Joe's comments and the constraints of the SSUTA, we propose the following alternative:

"Place of primary use" means the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" means a street address within the licensed service area of the home service provider.

We're hopeful that we can get to a happy medium on this one that satisfies Joe's drafting concerns and prevents DOR from arguing this item before the SSUTA's Compliance Board.

-Mike

From: Ley, Emily A - DOA
Sent: Tuesday, January 15, 2013 12:01 PM
To: Wagner, Michael W - DOR
Subject: DIN 7009 SSUTA definitions

Hi Mike,

Sorry for the million emails. I imagine you might be getting hit from Brian too.

I have a draft of DIN 7009, the SSUTA definition updates (Clarify definitions of "prosthetic device" and "prepared food" ...). The drafter attached this note on "place of primary use" definition:

With regard to BB0068, I understand that the definition comes from the streamlined sales and use tax agreement, but I cannot draft it as written because it is not consistent with our drafting standards. For instance, we do not use the word "must" in the statutes. Also, the first part of that definition is superfluous because it goes on to indicate that the address where the service primarily occurs is the customer's residential or primary business street address.

The language I used is consistent with the intent of the language under the streamlined agreement, which is not well drafted (probably because it's lifted from federal law). Therefore, DOR has the option to either except the language I provided (and indicate before the agreement's governing body, as they have done in the past, that the language is consistent with the agreement) or they can choose to not amend s. 71.522 (4) (a) 9. because it already refers to the definition under federal law.

Take a look at the draft and let me know what you think.

Emily Ley
Executive Policy & Budget Analyst
Department of Administration
Division of Executive Budget and Finance
(608)-266-7597
emily.ley@wisconsin.gov

CONFIDENTIALITY NOTICE: This electronic mail transmission and any accompanying documents contain information belonging to the sender which may be confidential and legally privileged. This information is only for the use of the individual or entity to whom this electronic mail transmission was intended. If you are not the intended recipient, any disclosure, copying, distribution, or action taken in reliance on the contents of the information contained in this transmission is strictly prohibited. If you have received this transmission in error, please immediately contact the sender and delete the message. Thank you.



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0268/P1
JK:kjf:jm

P2
RMR

DOA:.....Ley, BB0068 - Changes to sales tax definitions

FOR 2013-2015 BUDGET -- NOT READY FOR INTRODUCTION

PWF
1/16/13
jm

in 1-16-13

Don't Gen

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TAXATION

OTHER TAXATION

This bill makes technical corrections to state sales and use tax provisions.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 77.51 (10m) (a) 3. (intro.) of the statutes is amended to read:

3 77.51 (10m) (a) 3. (intro.) Food and food ingredients sold with eating utensils
4 that are provided by the retailer of the food and food ingredients, including plates,
5 bowls, knives, forks, spoons, glasses, cups, napkins, or straws. In this subdivision,
6 "plate" does not include a container or packaging used to transport food and food
7 ingredients. For purposes of this subdivision, a retailer provides utensils if any of
8 the following applies:

✓
1 SECTION 2. 77.51 (10m) (a) 3. b. of the statutes is amended to read:

2 77.51 (10m) (a) 3. b. For retailers not described under subd. 3. a., the retailer's
3 customary practice is to physically give or hand the utensils to the purchaser, except
4 that plates, bowls, glasses, or cups that are necessary for the purchaser to receive the
5 food and food ingredients need only be made available to the purchaser.

6 SECTION 3. 77.51 (11m) of the statutes is amended to read: ✓

7 77.51 (11m) "Prosthetic device" means a replacement, corrective, or supportive
8 device, including the repair parts and replacement parts for the device, that is placed
9 in or worn on the body to artificially replace a missing portion of the body; to prevent
10 or correct a physical deformity or malfunction; or to support a weak or deformed
11 portion of the body.

12 SECTION 4. 77.522 (4) (a) 9. of the statutes is amended to read: ✓

13 77.522 (4) (a) 9. "Place of primary use" means ~~place of primary use, as~~ *street address*
14 ~~determined under 4 USC 116 to 126, as amended by P.L. 106-252 the residential or~~ *the*
15 primary business street address that represents where *the* the customer's use of a
16 telecommunications service primarily occurs. *the* With regard to a mobile
17 telecommunications service, "place of primary use" means a street address within
18 the licensed service area of the home service provider. *case in the case of*

19 *services* SECTION 5. 77.53 (16) of the statutes is amended to read: ✓

20 77.53 (16) If the purchase, rental or lease of tangible personal property, or
21 items, property, or goods under s. 77.52 (1) (b), (c), or (d), or service subject to the tax
22 imposed by this section was subject to a sales tax by another state in which the
23 purchase was made, the amount of sales tax paid the other state shall be applied as
24 a credit against and deducted from the tax, to the extent thereof, imposed by this
25 section, except no credit may be applied against and deducted from a sales tax paid

1 on the purchase of advertising and promotional direct mail, if the advertising and
2 promotional direct mail purchaser did not provide to the seller a direct pay permit,
3 an exemption certificate claiming advertising and promotional direct mail, or other
4 information that indicates the appropriate taxing jurisdiction to which the
5 advertising and promotional direct mail is delivered to the ultimate recipients. In
6 this subsection “sales tax” includes a use or excise tax imposed on the use of tangible
7 personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or
8 taxable service by the state to which the sale was sourced and “state” includes the
9 District of Columbia and the commonwealth of Puerto Rico but does not include the
10 several territories organized by congress.

11 **SECTION 6.** 77.54 (57) (b) 4. of the statutes is amended to read: ✓

12 77.54 (57) (b) 4. The items listed in sub. (3m) (a) to (m), ~~medicines~~ drugs, semen
13 for artificial insemination, fuel, and electricity that are used exclusively and directly
14 in raising animals that are sold primarily to a biotechnology business, a public or
15 private institution of higher education, or a governmental unit for exclusive and
16 direct use by any such entity in qualified research or manufacturing.

17 (END)



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0268/P2

JK:kjf:jm

DOA:.....Ley, BB0068 – Changes to sales tax definitions

FOR 2013-2015 BUDGET — NOT READY FOR INTRODUCTION

1 **AN ACT ...; relating to:** the budget.

Analysis by the Legislative Reference Bureau

TAXATION

OTHER TAXATION

This bill makes technical corrections to state sales and use tax provisions.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 **SECTION 1.** 77.51 (10m) (a) 3. (intro.) of the statutes is amended to read:

3 77.51 (**10m**) (a) 3. (intro.) Food and food ingredients sold with eating utensils
4 that are provided by the retailer of the food and food ingredients, including plates,
5 bowls, knives, forks, spoons, glasses, cups, napkins, or straws. In this subdivision,
6 “plate” does not include a container or packaging used to transport food and food
7 ingredients. For purposes of this subdivision, a retailer provides utensils if any of
8 the following applies:

1 **SECTION 2.** 77.51 (10m) (a) 3. b. of the statutes is amended to read:

2 **77.51 (10m)** (a) 3. b. For retailers not described under subd. 3. a., the retailer's
3 customary practice is to physically give or hand the utensils to the purchaser, except
4 that plates, bowls, glasses, or cups that are necessary for the purchaser to receive the
5 food and food ingredients need only be made available to the purchaser.

6 **SECTION 3.** 77.51 (11m) of the statutes is amended to read:

7 **77.51 (11m)** "Prosthetic device" means a replacement, corrective, or supportive
8 device, including the repair parts and replacement parts for the device, that is placed
9 in or worn on the body to artificially replace a missing portion of the body; to prevent
10 or correct a physical deformity or malfunction; or to support a weak or deformed
11 portion of the body.

12 **SECTION 4.** 77.522 (4) (a) 9. of the statutes is amended to read:

13 **77.522 (4) (a) 9.** "Place of primary use" means ~~place of primary use, as~~
14 ~~determined under 4 USC 116 to 126, as amended by P.L. 106-252~~ the residential
15 street address or the primary business street address of the customer. In the case
16 of mobile telecommunications services, "place of primary use" means a street address
17 within the licensed service area of the home service provider.

18 **SECTION 5.** 77.53 (16) of the statutes is amended to read:

19 **77.53 (16)** If the purchase, rental or lease of tangible personal property, or
20 items, property, or goods under s. 77.52 (1) (b), (c), or (d), or service subject to the tax
21 imposed by this section was subject to a sales tax by another state in which the
22 purchase was made, the amount of sales tax paid the other state shall be applied as
23 a credit against and deducted from the tax, to the extent thereof, imposed by this
24 section, except no credit may be applied against and deducted from a sales tax paid
25 on the purchase of advertising and promotional direct mail, if the advertising and

promotional direct mail purchaser did not provide to the seller a direct pay permit, an exemption certificate claiming advertising and promotional direct mail, or other information that indicates the appropriate taxing jurisdiction to which the advertising and promotional direct mail is delivered to the ultimate recipients. In this subsection “sales tax” includes a use or excise tax imposed on the use of tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or taxable service by the state to which the sale was sourced and “state” includes the District of Columbia and the commonwealth of Puerto Rico but does not include the several territories organized by congress.

SECTION 6. 77.54 (57) (b) 4. of the statutes is amended to read:

77.54 (57) (b) 4. The items listed in sub. (3m) (a) to (m), ~~medicines~~ drugs, semen for artificial insemination, fuel, and electricity that are used exclusively and directly in raising animals that are sold primarily to a biotechnology business, a public or private institution of higher education, or a governmental unit for exclusive and direct use by any such entity in qualified research or manufacturing.

(END)